
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
TravelCenters of America)	File Number EB-05-PO-029
)	
Troutdale, Oregon)	NAL/Acct. No. 20053292002
)	FRN # 0013411665

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 27, 2005

By the Resident Agent, Portland Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that TravelCenters of America ("TravelCenters") in Troutdale, Oregon, apparently willfully and repeatedly violated Section 302(b) of the Commissions Act of 1934, as amended ("Act"),¹ and Section 2.803(a)(1) of the Commission's Rules ("Rules")² by offering for sale a non-certified Citizens Band ("CB") transceiver. We conclude, pursuant to Section 503(b) of the Act,³ TravelCenters is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).⁴

II. BACKGROUND

2. On October 25, 2001, an agent from the Enforcement Bureau's Portland Resident Agent Office ("Portland Office") visited TravelCenters' retail store in Troutdale, Oregon. The agent observed that the store displayed and offered for sale six models of CB transceivers, specifically, one Delta Force transceiver and five Galaxy transceivers models DX33HML, DX44V, DX66V, DX88HL and DX99V. A review of the Commission's records revealed that these devices had not received an equipment authorization from the Commission.

3. On November 19, 2001, the Portland Office issued a Citation to TravelCenters' retail store in Troutdale, Oregon for violation of Section 302(b) of the Act, and Section 2.803(a)(1) of the Commission's Rules by selling non-certified CB transceivers.⁵ The Citation warned TravelCenters that future violations may subject TravelCenters to civil monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,⁶ seizure of equipment through *in rem* forfeiture action, and

¹47 U.S.C. § 302a(b).

²47 C.F.R. § 2.803(a)(1).

³47 U.S.C. § 502(b).

⁴47 C.F.R. Part 2, Subpart J.

⁵Citation to TravelCenters of America, Inc., released November 19, 2001 ("Citation").

⁶See 47 C.F.R. § 1.80(b)(3).

criminal sanctions including fines and imprisonment.⁷

4. In a response dated December 3, 2001, counsel for TravelCenters disputed the Citation, stating that the transceivers listed in the Citation were legal to sell. Counsel for TravelCenters further requested that the Portland Office withdraw the Citation within 30 days from December 3, 2001. In a letter to the Portland Office, dated January 18, 2002, counsel for TravelCenters indicated that he would advise his client to resume selling the referenced non-certified CB transceivers. In a response to TravelCenters, dated February 6, 2002, the Portland Office reaffirmed the violation and warned that the marketing of the non-certified CB transceivers should cease immediately.⁸

5. On February 9, 2005, an agent from the Portland Office went to TravelCenters' retail store in Troutdale, Oregon. The agent observed and took photographs of non-certified Galaxy CB transceivers that were displayed at the store. The agent asked a salesperson at the store if he could purchase one of the transceivers and the salesperson responded that she would sell the transceiver to the agent. The agent also interviewed the store manager. The store manager acknowledged that his store once received a Citation from the FCC but that he believed the above Galaxy CB transceivers were legal to sell. After talking with the agent, the store manager indicated that he would pull the transceivers off the shelves.⁹

III. DISCUSSION

6. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.¹⁰ The term "repeated" means the commission or omission of such act more than once or for more than one day.¹¹

7. Section 302(b) of the Act provides that "[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply

⁷See 47 C.F.R. § 501, 503(b), 510.

⁸In a response letter to the Portland Office, dated February 13, 2002, Counsel for TravelCenters again disputed the Citation and requested that the Citation to be withdrawn by the Portland Office within 30 days.

⁹On January 20, 2005, the Commission's Detroit District Office issued a Citation for selling non-certified CB transceivers to a TravelCenters retail store in Dexter, Michigan. In a response dated February 4, 2005, TravelCenters stated that they disagreed with the legal and factual contentions in the Citation, but that they would remove the transceivers from the Dexter, Michigan retail store. On April 5, 2005, the Commission's New York District Office issued a Citation for selling non-certified CB transceivers to a TravelCenters retail store in Bloomsbury, New Jersey. In a response dated April 14, 2005, TravelCenters again stated that they disagreed with the legal and factual contentions contained in the Citation but that they would remove the transceivers from the Bloomsbury, New Jersey retail store.

¹⁰Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹¹Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

with regulations promulgated pursuant to this section.”¹² Section 2.803(a)(1) of the Rules provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission”¹³

8. CB radio transceivers are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.¹⁴ Unlike CB radio transceivers, radio transmitting equipment that transmits solely on Amateur Radio Service (“ARS”) frequencies is not subject to equipment authorization requirements prior to manufacture or marketing. However, some radio transmitters that transmit in a portion of the 10-meter band of the ARS (28.000 to 29.700 MHz) are equipped with rotary, toggle, or pushbutton switches mounted externally on the unit, which allow operation in the CB bands after completion of minor and trivial internal modifications to the equipment. To address these radios, the Commission adopted changes to the CB type acceptance requirements by defining a “CB Transmitter” as “a transmitter that operates or is intended to operate at a station authorized in the CB.”¹⁵ Section 95.655(a) of the Rules also states that no transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not listed in Section 95.625 of the Rules (CB transmitter channel frequencies).¹⁶ Also, the Commission’s Office of General Counsel (“OGC”) released a letter on the importation and marketing of ARS transmitters, which clarified that transmitters that “have a built-in capacity to operate on CB frequencies and can easily be altered to activate that capacity, such as by moving or removing a jumper plug or cutting a single wire” fall within the definition of “CB transmitter” under Section 95.603(c) of the Rules and therefore require certification prior to marketing or importation.¹⁷ Additionally, the Commission’s Office of Engineering and Technology (“OET”) has evaluated the Galaxy models at issue here and has determined that these devices could easily be altered for use as CB transceivers.

9. On November 19, 2001, the Portland Office issued a Citation to TravelCenters’ retail store in Troutdale, Oregon, for violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. Specifically, the TravelCenters’ store was selling non-certified Galaxy CB transceivers. On February 9, 2005, a subsequent inspection by a Portland agent revealed that the TravelCenters’ retail store in Troutdale, Oregon continued to sell non-certified Galaxy CB transceivers.¹⁸ When asked by the agent if he could purchase one of the transceivers, the salesperson in the store responded that she would sell the transceiver to the agent. At the time of the inspection, the manager of the store acknowledged to the Portland agent that the store had previously received a Citation from the Commission.

10. TravelCenters previously received a Citation concerning the sale of non-certified Galaxy CB transceivers in its Troutdale, Oregon store, but continued to sell the transceivers. Therefore, its violation was willful. The violation occurred on more than one day. Therefore, it was repeated. Based on

¹²47 U.S.C. § 302a(b).

¹³47 C.F.R. § 2.803(a)(1).

¹⁴See 47 C.F.R. §§ 2.907, 2.927(a).

¹⁵47 C.F.R. § 95.603(c).

¹⁶47 C.F.R. § 95.655(a).

¹⁷Letter from Christopher Wright, General Counsel, FCC to John Wood, Chief Intellectual Property Rights, US Customs Service, 14 FCC Rcd 7797 (OGC, 1999).

¹⁸The Galaxy transceivers found by the agent at the time of the inspection have previously been evaluated by OET, which determined that they were non-certified CB transceivers.

the evidence before us, we find that TravelCenters apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules by offering for sale a non-certified CB transceiver.

11. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),¹⁹ and Section 1.80 of the Rules,²⁰ the base forfeiture amount for marketing unauthorized equipment is \$7,000 per violation.²¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.²² Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that TravelCenters is apparently liable for a \$7,000 forfeiture.

IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules,²³ TravelCenters of America is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.

13. IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, TravelCenters of America SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, P.O. Box 61469, Vancouver, Washington 98666-1469 and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

¹⁹12 FCC Rcd 17087 (1997), *recon. Denied* 15 FCC Rcd 303 (1999).

²⁰47 C.F.R. § 1.80.

²¹12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

²²47 U.S.C. § 503(b)(2)(D).

²³47 C.F.R. §§ 0.111, 0.311, 0.314, and 1.80.

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17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁴

18. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to TravelCenters of America, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau

²⁴See 47 C.F.R. § 1.1914.